

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5233 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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GIRISH @ PAPPU RADHAKRISHAN VARDE

Versus

COMMISSIONER OF POLICE

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Appearance:

MR ADIL MEHTA for Petitioner

Mr.R.M.CHAUHAN, A.G.P. for Respondents No. 1,2 & 3

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 16/09/97

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner - detenu has brought under challenge the detention order dated 26th June 1997 rendered by respondent No.1 u/s. 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (Act No.16 of 1985) (for short 'the PASA Act').

2. The grounds on which the impugned order of detention has been passed appear at Annexure : B to the petition. They inter-alia indicate that the petitioner has been indulging in criminal and anti-social activities of assaulting innocent people, causing hurt to them and creating atmosphere of fear and four offences, three of 1996 have been registered respectively with Shahpur Police Station, Ahmedabad, Palanpur Police Station and Satellite Police Station, Ahmedabad and the last offence of 1997 has been registered in Shahpur Police Station, Ahmedabad on 7th February 1997, under the various provisions of the Indian Penal Code as also the relevant provisions of the Arms Act, as per particulars set out in the grounds of detention.

3. It has been recited that the detenu's anti-social activity tends to obstruct maintenance of public order and in support of such conclusion statements of four witnesses have been relied upon. They speak about the incidents dated 12.1.1997 and 2.2.1997, indicating threatening, assaulting and beating the concerned witnesses in public resulting in fear in the mind of people.

4. It is on the aforesaid incidents that the detaining authority has passed the impugned order of detention while also relying upon the aforesaid cases lodged against the petitioner. The petitioner has been branded as a 'dangerous person' within the meaning of Section 2(c) of the PASA Act.

5. The petitioner has challenged the impugned order of detention on number of grounds, inter-alia, on the ground that the detaining authority has not supplied the copy of complaint, production report, reply filed by the detenu and the order passed by the Executive Magistrate in the proceeding under Section 151 of the Code of Criminal Procedure undertaken before the learned Executive Magistrate on 26.6.1997.

6. In support of the aforesaid ground of challenge against the impugned order of detention Mr.Adil Mehta, learned Advocate read before this Court the last portion of ground of detention which inter-alia indicate that reference has been made to the proceeding before the learned Executive Magistrate undertaken under Section 151 Cr.P.C. and reference has been made to supply of copy of the Report and copy of the identification Register. Mr.R.M.Chauhan, learned A.G.P. for the respondents has verified from the papers that the copies of the documents referred to in the aforesaid ground of challenge have not

been supplied to the petitioner. This is clearly illegal and in violation of Article 22(5) of the Constitution of India. The detenu has in turn stated that in his reply he represented before the learned Executive Magistrate that he would not like to be released on personal bond and would like to remain in judicial custody, but the learned Executive Magistrate passed order of releasing the detenu on Personal Bond. In my opinion, the documents referred to by the petitioner are relevant documents and non-supply of copies thereof would vitiate the impugned order of detention. If such documents are not placed before the detaining authority then also the order would stand vitiated on account of non-placement of relevant material before the detaining authority as the same might affect the subjective satisfaction of such authority.

7. There are other grounds of challenge levelled against the impugned order of detention. However, in view of the fact that the petitioner would succeed on the ground of non-supply of copy of relevant documents it is not necessary to deal with the other grounds.

8. There is another aspect of the matter. The petitioner came to be released on Bail in CR No. 612 of 1996 by this Court in Criminal Application No. 2957 of 1997 by order dated 24.6.1997 (Coram : A.R.Dave, J.). Following conditions have been imposed against the petitioner :

- (a) He shall not take undue advantage of his liberty or misuse his liberty;
- (b) He shall not act in a manner injurious to the interest of the prosecution;
- (c) He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any Police Officer;
- (d) He shall maintain law and order;
- (e) He shall report at Deesa Police Station every day between 8.00 a.m. and 10.00 a.m. except on the days on which he has to report at any police station outside Deesa City or has to attend any Court outside Deesa.

(f) He shall not leave the local limits of Deesa City without prior permission of the Sessions Judge at Deesa;

(g) He shall furnish the address of his residence at the time of execution of the bond and shall not change his residence without prior permission of this Court;

This Court has also directed that in the event of breach of any of the above conditions the Sessions Judge at Deesa will be free to issue warrant or take appropriate action in the matter.

It appears that before the aforesaid conditions would start operating the impugned order of detention came to be clamped. It is, therefore, obvious that the petitioner will have to abide by the conditions imposed on him by this Court.

9. With these observations following order is passed:

The impugned order of detention is hereby quashed and set aside. The petitioner - detenu - Girish @ Pappu Radhakrishna Varde shall be forthwith set at liberty, if he is not required to be detained in any other case. Rule made absolute accordingly.

Writ to be sent to the Superintendent, Central Jail, Vadodara.

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